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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	**Chapter 11**
RANDALL'S ISLAND FAMILY GOLF CENTERS, INC., et al.	:	**Case Nos. 00 B 41065 (SMB) through 00 B 41196 (SMB)**
Debtors.	:	

AMENDED OBJECTION TO DEBTORS' MOTION FOR ORDERS PURSUANT TO SECTIONS 105, 363, 365, AND 1146 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002, 6004, 6006, AND 6007, RELATING TO ASSUMPTION, SALE AND ASSIGNMENT OF CERTAIN LEASEHOLD INTERESTS

TO THE HONORABLE STUART M. BERNSTEIN,
UNITED STATES BANKRUPTCY JUDGE:

Debtors and Debtors-in-Possession (the "Debtors") have filed on July 18, 2000, a motion (herein called "Motion") in this case seeking orders from this Court authorizing and approving, among other things, the assumption, sale and assignment of certain leasehold interests owned or purportedly owned by Debtors, including that certain Ground Lease and Option, ("Ground Lease") dated May 15, 1997, by and between Eagle Quest Golf Centers (Texas), Inc., as "Tenant" and Golf Real Estate, Inc., as "Landlord", a true and correct copy of the provisions of which applicable and referred to herein is attached hereto as Exhibit "A" for all pertinent purposes (exhibit has been

extracted from original computer file, absent original pagination)(please see portions which are double underlined for quick reference).

Preliminary Statement

1. This Objection to the Motion is filed by Golf Real Estate, Inc., a creditor, interested party, and the Landlord under the Ground Lease, and by Golf Operations, Inc., a creditor and interested third party, because Debtors have refused to pay or to provide any assurance that payment will be made out of the proceeds of any sale of the Ground Lease to cure all existing defaults thereunder, as is required under §365(b)(1) and §365(d)(3) of the Bankruptcy Code. This Objection is limited to and relates only to the Ground Lease.

Jurisdiction and Venue

2. Jurisdiction over this civil action is vested in the United States District Court for this District pursuant to Sections 1334 of Title 28 of the United States Code ("Judicial Code").

3. This civil action has been referred to this Court for consideration pursuant to Section 157 of Title 28 of the Judicial Code and the *Standing Order of Referral of Cases to Bankruptcy Judges* (S.D.N.Y July 10, 1984)(Ward, Acting C.J.)

4. This is a core proceeding arising under Title 11 of the United States Code or arising in a case under Title 11 of the United States Code. *See* 28 U.S.C. §157(b)(1). The statutory predicate for the relief sought herein is Sections 365(b)(1) and 365(d)(3).

5. Venue of this civil proceeding in this district is proper pursuant to Section 1409 of the Judicial Code.

Background and Assertion of Objection

6. Since the filing by Golf Real Estate, Inc. and Golf Operations, Inc. of their original Objection herein on July 28, 2000, Debtors, as "Seller", and KLAK Golf. L.L.C., as "Purchaser",

have entered into that certain "Agreement of Sale", dated effective August 1, 2000, related to the sale of certain properties owned in fee by Debtors and the assumption and assignment (pursuant to specified election rights reserved by KLAK) of certain non-residential properties subject to unexpired leases, including the Ground Lease ("Agreement of Sale"). Golf Real Estate, Inc. and Golf Operations, Inc. assert this amended objection to the Motion and to any assumption and assignment now or hereafter provided for, called for, or sought under and pursuant to the Agreement of Sale.

7. In accordance with Article V of the Ground Lease, any amounts due as "Other Charges" (a defined term) are deemed and treated for all purposes as additional rent. "Other charges" is defined as "any and all sums, liabilities, obligations, and other amounts, other than Ground Rent, which Tenant is or may be required to pay or discharge (or cause to be paid or discharged) in accordance with the terms of this Lease". Golf Real Estate, Inc. and Golf Operations, Inc. set forth below the items and related amounts which are and constitute "rent" due and payable under the Ground Lease, and as to which Debtors are currently in default (Total = **$ 173,814.13**):

A.	2000 Maintenance Fee, Kingwood Place West Community Association Maintenance Fee, Penalty and Interest Through 4-17 (plus penalty and interest through date of payment	$ 1,441.71
B.	Taxes due per Debtor's "Notice of Proposed Assignment of Lease and Statement of Cure Amounts", dated August 7, 2000, including 2000 Property Taxes payable to the City of Houston, Texas (Tax, Penalty and Interest through 8-31-2000), in the amount of $ 7,962.96	$17,969.19
C.	2000 Contingent Payment due under §1(C)(i)(d) of Asset Purchase Agreement (hereinafter defined), and under § 15.01(e) of the Ground Lease	$ 150,000.00
D.	Ground Rent (May 1, 2000 - May 4, 2000)	$ 403.23
E.	Amounts due related to failure to install oil/water separator, per agreement dated May 15, 2000	$ 4,000.00

8. It is believed that Debtors do intend to pay all of the above amount other than item C, "2000 Contingent Payment", hereinafter defined, although in the event that such belief is not well founded and/or Debtors refuse to pay such amounts Golf Real Estate, Inc. and Golf Operations, Inc. reserve the right to re-assert this Objection with respect to any such refusal to resolve all defaults under the Ground Lease. The Ground Lease contains a cross-default provision ("Cross-Default Provision") related to contingent payments due under that certain Asset Purchase Agreement ("Asset Purchase Agreement") dated May 15, 1997, by and between Eagle Quest Golf Centers, Inc., as "Buyer", Eagle Quest Golf Centers (Texas), Inc., as "Subsidiary", and Golf Real Estate, Inc. and Golf Operations, Inc., as "Sellers", a true and correct copy of the provisions of which applicable and referred to herein is attached hereto as Exhibit "B" for all pertinent purposes (exhibit has been extracted from original computer file, absent original pagination)(please see portions which are double underlined for quick reference). The cross-default provision, [Section 15.01(e) of the Ground Lease], states that the following constitutes and "Event of Default" under the Ground Lease:

> "(e) if Tenant or Eagle Quest Golf Centers Inc. shall default in the payment of any amount required to be paid by Tenant or Eagle Quest Golf Centers Inc. or in the performance of or compliance with any of the terms and conditions required to be done by Tenant or Eagle Quest Golf Centers Inc. under the Asset Purchase Agreement."

7. Under Section 1(C)(i)(d) of the Asset Purchase Agreement, regarding "Contingent Payments" due and payable to Golf Real Estate, Inc and Golf Operations, Inc. in the event of the achievement by Eagle Quest Golf Centers (Texas), Inc., of the revenue "Performance Targets" set forth therein, Eagle Quest Golf Centers (Texas), Inc. failed to timely provide to Golf Real Estate, Inc. and Golf Operations, Inc. the "Critical Revenue Statement", the consequence of which, even if the performance target for Gross Range Revenue were not actually achieved, is automatic achievement

of the Performance Target. In spite of this failure to provide the Critical Revenue Statement, Eagle Quest Golf Centers (Texas), Inc. actually achieved the Performance Target for Gross Range Revenue for the period from May 15, 1999 through May 14, 2000. Accordingly, on May 15, 2000, Golf Real Estate, Inc and Golf Operations, Inc. were entitled to the 2000 Contingent Payment called for in the Asset Purchase Agreement in the amount of $150,000.00, with payment thereof due on or before July 15, 2000 ("2000 Contingent Payment"). The Ground Lease provides for a cure period of thirty days after written notice by the Landlord to the Tenant in the event of the occurrence of an Event of Default of this kind. Written notice called for in the Ground Lease was given by Landlord to Tenant [debtor, Eagle Quest Golf Centers (Texas), Inc.] on July 18, 2000. Payment of the 2000 Contingent Payment has not been made, no adequate assurance that such payment will be made has been given by Debtors to Golf Real Estate, Inc., and counsel for the Debtors have advised in writing that such payment will not be made, and that such assurance will not be given because it is their opinion that failure to pay the 2000 Contingent Payment is not a default which must be cured under the Bankruptcy Code.

8. The Asset Purchase Agreement and the Ground Lease were part of and form one indivisible transaction which was consummated on May 15, 1997, and were and are not divisible agreements. The Asset Purchase Agreement and the Ground Lease were and are inextricably intertwined, and the interrelationship between such documents was intended and was a specific and essential part of the bargain by and between Golf Real Estate, Inc. and Golf Operations, Inc. on the one hand, and Eagle Quest Golf Centers, Inc., and Eagle Quest Golf Centers (Texas), Inc. on the other. The Asset Purchase Agreement referred to and incorporated the Ground Lease as an Exhibit, and the Ground Lease referred to and incorporated the Asset Purchase Agreement, with the Ground Lease containing the Cross-Default Provision.

9. §365(b)(1) of the Bankruptcy Code provides, in pertinent part, that if there has been a default in an unexpired lease of the debtor, the debtor may *not* (emphasis added) assume such lease, unless, at the time of the assumption of such lease, such default is cured, or the debtor provides adequate assurance that such default will be cured. §365(d)(3) of the Bankruptcy Code provides, in pertinent part, that the debtor shall timely perform all of the obligations of debtor, other than those specifically elsewhere enumerated and not pertinent in this context, arising from and after the order for relief under any unexpired lease of nonresidential property, and until the lease is assumed or rejected. In spite of this statutory directive and in spite of numerous written requests and demands made by Golf Real Estate, Inc. and Golf Operations, Inc. Debtors have failed and refused to pay post-petition rent as specified in Paragraph 7 above (insofar as the items and amounts there listed are related to obligations arising after May 4, 2000).

10. Golf Real Estate, Inc. and Golf Operations, Inc. have attached to this Objection their Answering Memorandum of Law, as required under and pursuant to Local Rule 9013-1.

Conclusion

11. Under the Ground Lease, the Asset Purchase Agreement, applicable non-bankruptcy law governing such documents, the Bankruptcy Code, and decisional law interpreting the Bankruptcy Code, it is incumbent upon Debtors to cure all existing monetary and non-monetary defaults at or prior to Debtor's proposal to assume, then assign the Ground Lease (as more specifically detailed in the Motion), or to provide adequate assurance that the Debtors will promptly cure all such defaults. At this time Debtors have neither cured, nor offered to cure, nor provided adequate assurance, nor offered to provide adequate assurance that such defaults will be cured.

WHEREFORE, Golf Real Estate, Inc. and Golf Operations, Inc. request:

1. that this Objection to the Motion be docketed and scheduled for hearing before the Court prior to or contemporaneously with this Court's consideration of any motion or request for an order approving assumption (or assumption and assignment) of the Ground Lease, or with respect to any motion or request by Debtors for a "Lease Assignment Order" under the Agreement of Sale;

2. that any and all consideration of the Motion, insofar, and only insofar as related to the Ground Lease, be stayed and delayed until such time as Debtors have cured all defaults thereunder or provided adequate assurance to them that all defaults thereunder will be cured;

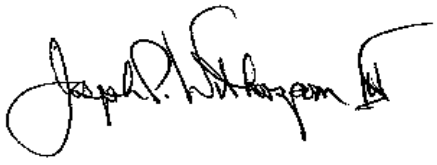
3. that any and all relief sought by Debtors in the Motion be denied;

4. alternatively, Golf Real Estate, Inc. and Golf Operations, Inc. seek an order of the Court granting any and all relief sought by Debtors in the Motion, insofar, and only insofar as related to the Ground Lease, conditioned upon the cure by Debtors of all defaults thereunder or the provision of adequate assurance to them that all defaults thereunder will be cured;

5. that the Court order such other and further relief as may be appropriate.

Dated: Houston, Texas.
August 9, 2000

POLLICOFF, SMITH & REMELS, L.L.P.



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ATTORNEYS FOR GOLF REAL ESTATE, INC, AND GOLF OPERATIONS, INC.

EXHIBIT "A"

TO OBJECTION

EXCERPTS FROM GROUND LEASE AND OPTION DATED MAY 15, 1997

GROUND LEASE AND OPTION

BY AND BETWEEN

GOLF REAL ESTATE, INC. (LANDLORD)

AND

EAGLE QUEST GOLF CENTERS (TEXAS) INC. (TENANT)

Dated as of May 15, 1997

Premises Situated in Kingwood, Texas

ARTICLE II

TERM

The term of this Lease shall be for the period of thirteen (13) years commencing on ____May_____15_, 1997 (the "Commencement Date") and expiring on __May_____15_, 2010. Such term is referred to herein as the "Term of this Lease".

ARTICLE III

RENT

Section 3.01. Ground Rent. From and after the Commencement Date and throughout the term of this Lease, Tenant shall pay to Landlord ground rent (the "Ground Rent") in the total amount of $1,500,000.00, monthly in advance, in the following annual amounts:

first through fifth calendar years	$ 50,000 ($ 4,167 per month)
sixth through tenth calendar years	$100,000 ($ 8,333 per month)
eleventh through thirteenth calendar years	$250,000 ($20,833 per month)

Ground rent for any partial month shall be prorated accordingly. If the Commencement Date falls on a day other than the first day of a calendar month, the Ground Rent for such first partial month shall be paid on the Commencement Date.

Section 3.02. Payment of Ground Rent. All installments of Ground Rent shall be paid in lawful funds of the United States of America, at the address of Landlord set forth in Article XXIII or at such other address, to such other party, or by such other means as Landlord may direct to Tenant from time to time by written notice given in accordance with this Lease. Tenant shall, except as specifically provided herein, pay all installments of Ground Rent without any notice or demand whatsoever. The covenant and obligation of Tenant to pay Ground Rent hereunder is absolute, and shall be and remain independent of any other covenant imposed by this Lease upon either Landlord or Tenant; provided, however, that Tenant shall have the right to off-set the payment of Ground Rent against any obligations of Landlord or any obligations of Golf Operations, Inc., or T. Michael O'Connor, arising out of that Asset Purchase Agreement dated May __15__, 1997, by and between Golf Real Estate, Inc. and Golf Operations, Inc. as "Sellers", and Eagle Quest Golf Centers Inc. as "Buyer", and Tenant as "Subsidiary" ("Asset Purchase Agreement"), to which reference is here made for all pertinent purposes, as thought set forth herein verbatim, subject to the specific controls and limitations upon the right of off-set contained in Section 6(E) of the Asset Purchase Agreement.

ARTICLE IV

USE

The Premises may be used and occupied only for the operation, by Tenant or any permitted subtenant of Tenant, of a lighted or unlighted executive golf course, golf driving range, pro-shop and practice facility and related uses or such other use as approved, in writing and in advance, by Landlord, and in any event such use shall at all times be in accordance with all restrictions and\or covenants affecting or regarding the use of the Premises of record in Montgomery County, Texas and all Legal Requirements (as hereinafter defined). For purposes of this Lease, the term "Legal Requirements" shall mean all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions affecting the Premises or the use or occupancy, thereof, whether now or hereafter enacted and in force.

ARTICLE V

NET LEASE

Landlord and Tenant acknowledge and agree that this Lease is intended as a net lease, and that the Ground Rent and all Other Charges (as hereinafter defined) are intended to be paid to Landlord or otherwise as provided herein absolutely net to Landlord, without any notice or demand whatsoever. Without limiting the generality of the foregoing, Tenant shall pay (or cause the payment of) all costs, Impositions (as defined in Section 7.01(b)), insurance premiums, and other expenses of every character, ordinary or extraordinary, foreseen or unforeseen, in connection with this Lease or the possession, use, occupancy, maintenance, repair, construction or reconstruction of the Premises, any Improvements (as defined in Section 6.01) or any portion of either. As used herein, the term "Other Charges" shall be defined as any and all sums, liabilities, obligations, and other amounts, other than Ground Rent, which Tenant is or may be required to pay or discharge (or to cause to be paid or discharged) in accordance with the terms of this Lease, including but not limited to any interest, penalty, or other sum which may be added to any sum payable by Tenant hereunder by reason of Tenant's failure to pay any such sum as and when the same shall first be deemed payable hereunder. For all purposes under this Lease, the amounts due as Other Charges shall be deemed as additional rent and Landlord shall be entitled to any remedy afforded to such amounts being designated as rents. Other Charges payable for partial periods occurring at the commencement or termination of this Lease shall be prorated as between Landlord and Tenant as appropriate.

ARTICLE VI

IMPROVEMENTS

Section 6.01. Definitional. For purposes of this Lease, the term "Improvements" shall mean all buildings, structures, improvements, betterments, enhancements, installations and

to or greater in value to that just prior to such Casualty or replace such damaged or destroyed Improvements with other Improvements which Tenant believes would more effectively enhance the overall value or utility of the Premises; or (b) raze the damaged portion of the Improvements and remove all of the debris resulting therefrom from the Land.

ARTICLE XIII

PERMITTED CONTESTS

Notwithstanding any provision of this Lease which specifically requires Tenant to pay any Imposition, to observe, perform, or comply with any Legal Requirement, or to pay, discharge, satisfy or release any Lien (as defined in Article XIV), Tenant may, in accordance with the provisions of this Article XIII, contest the validity, amount, or application to Tenant, to the Premises or any Improvement or to this Lease or Tenant's obligations hereunder, of any Imposition, Legal Requirement or Lien, so long as the Land is not thereby subjected to imminent loss or forfeiture. Any contest conducted pursuant to this Article XIII (all such contests are referred to herein as "Permitted Contests") shall be conducted by appropriate legal (or, if appropriate, administrative) proceedings initiated in good faith and thereafter prosecuted with due diligence, at no cost or expense to Landlord and Landlord shall cooperate with Tenant in connection with any such proceedings.

ARTICLE XIV

LIENS ON PREMISES

Tenant shall not have any right, power or authority whatsoever to create, impose, establish or cause the creation, imposition, or establishment of any lien, encumbrance, charge, levy or other imposition upon the fee simple interest and estate of Landlord in and to the Premises or any portion thereof or any of the rights, title and interests of Landlord in or to the reversionary estate of Landlord in or to any of the same (in any case, a "Lien"). If any Lien arises or is asserted in consequence of any act, omission, or obligation of Tenant, Tenant shall cause such Lien to be canceled and discharged of record by payment, deposit, bond, order of court of competent jurisdiction or otherwise within thirty (30) days after Tenant's receipt of notice of the existence or pendency of the same.

ARTICLE XV

DEFAULTS

Section 15.01. Events of Default by Tenant. The occurrence of any one or more of the following events shall constitute an "Event of Default" by Tenant under this Lease:

(a) if default shall be made in the payment of any installment of Ground Rent or the payment of any Imposition when and as the same shall become due and payable, and such default shall continue for ten (10) days after Tenant's receipt of Landlord's notice to Tenant of such default;

(b) except as herein otherwise provided, if Tenant shall default in the due performance of or compliance with any of the terms hereof (other than those referred to in paragraph (a) of this Section 15.01), including, but not limited to, default under paragraph (e) of this Section 15.01, and any such default shall continue for more than thirty (30) days after Tenant's receipt of Landlords notice to Tenant thereof, unless such default is not susceptible to correction using reasonable ameliorative procedures commenced by or on behalf of Tenant within such thirty (30) day period and thereafter prosecuted with due diligence, in which case Tenant shall not be deemed to have committed an Event of Default hereunder provided that Tenant (or any party acting for or on behalf of Tenant) shall continue diligently to prosecute such curative procedures to a timely completion; or

(c) if Tenant shall make a general assignment for the benefit of creditors, files a petition under any bankruptcy or insolvency laws or there is filed against Tenant a petition under any bankruptcy or insolvency laws (and such petition is not dismissed within sixty (60) days after its filing); or

(d) if any execution or attachment shall be issued against Tenant (and such execution or attachment is not dismissed within sixty (60) days after its issuance) as a result of which the Premises shall be taken or occupied by someone other than Tenant.

(e) if Tenant or Eagle Quest Golf Centers Inc. shall default in the payment of any amount required to be paid by Tenant or Eagle Quest Golf Centers Inc. or in the performance of or compliance with any of the terms and conditions required to be done by Tenant or Eagle Quest Golf Centers Inc. under the Asset Purchase Agreement.

ARTICLE XVI

LANDLORD'S REMEDIES UPON TENANT'S DEFAULT

(a) If an Event of Default by Tenant shall have occurred as provided at Section 15.01, above, and for so long as the same shall remain uncured, Landlord shall have the right:

(i) to pay any sum lawfully and legally required to be paid by Tenant to others which Tenant has failed to pay, and to perform any obligation required to be performed by Tenant, for the account of the Tenant, and any amount so paid by Landlord and all expenses connected therewith, shall be repaid by Tenant to Landlord on demand.

(ii) to enjoin any breach by the Tenant of any covenant, agreement, term, provision, or condition hereof.

(iii) to bring suit for the collection of the rent or other amounts for which Tenant may be in default, or for the specific performance of another covenant devolving upon Tenant for performance, and for damages for the non-performance thereof, all without entering into possession or terminating this Lease.

(iv) to re-enter the Premises or any part thereof, and take possession thereof, without thereby terminating this Lease, and thereupon Landlord may expel and remove all property therefrom, either peaceably or by such force as may be necessary, without becoming liable to prosecution or otherwise obligated therefor, and relet the Premises or any part thereof for such periods and upon such terms according to Landlord's sole discretion, and receive the rent therefrom, applying the same first to the payment of the reasonable expenses of such re-entry and the cost of such reletting, and then to the payment of the rent accruing hereunder and other sums payable by Tenant hereunder, and Tenant, whether or not the Premises are relet, shall remain liable for any deficiency. It is agreed that any entry of the Premises, the commencement and prosecution of any action by Landlord in forcible entry and detainer, ejectment or otherwise, or the appointment of a receiver, or any execution of any decree obtained in any action to recover possession of the Premises, or any re-entry, shall not be construed as an election to terminate this Lease unless Landlord shall, in writing, expressly exercise its election to declare the term hereunder ended and to terminate this Lease, and, unless this Lease be expressly terminated, any such re-entry or entry by Landlord whether had or taken under summary proceedings or otherwise, shall not be deemed to have absolved or discharged Tenant from any of its obligations and liabilities for the remainder of the term of the Lease.

(v) to terminate this Lease, re-enter upon the Premises, with or without process of law, and take possession thereof unencumbered by this Lease. In the event Landlord shall elect to terminate this Lease as aforesaid, all rights of Tenant, and of any permitted successors and assigns, shall cease and terminate and Landlord shall have and retain full right to sue for and collect all rents and other amount for the payment of which Tenant shall then be in default, and Landlord shall have full right to sue for and collect damages by reason of such breach, and Tenant shall surrender and deliver up the entire Premises to Landlord, together with all improvements and additions thereto, and upon any default by Tenant in so doing Landlord shall have the right to recover possession by summary proceedings or otherwise, and to obtain a receiver and other ancillary relief in such action, and again to have and enjoy the Premises, fully and completely, as if this Lease had never been made. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws

in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the Premises by reason of the breach or violation by Tenant of any of the covenants and conditions in this Lease contained or otherwise.

(b) Any amount or amounts paid by Landlord for the account of Tenant for the performance of any obligations required to be performed by Tenant shall be treated as additional rental due hereunder and Landlord may exercise concurrently or successively any one or more of the rights and remedies contained herein for the enforcement of or default in the payment of rent.

(c) After service of notice or commencement of suit by Landlord for possession of the Premises, or after final judgment for possession of the Premises in favor of Landlord, Landlord, without prejudice, may receive and collect rent and other sums due from Tenant, and the payment of said rent or other sums shall not waive or affect said notice, suit, or judgment.

(d) All rights and remedies granted herein and any other rights or remedies which Landlord may have at law or in equity are hereby declared to be cumulative and not exclusive, and the fact that Landlord may have exercised any remedy without terminating this Lease shall not impair Landlord's rights thereafter to terminate or to exercise any other remedy herein granted or to which Landlord may otherwise be entitled.

ARTICLE XVII

MORTGAGE OF INTERESTS

EXHIBIT "B"

TO OBJECTION

EXCERPTS FROM ASSET PURCHASE AGREEMENT DATED MAY 15, 1997

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement")
is made as of the __15___ day of ___May___, 1997,

BETWEEN:

EAGLE QUEST GOLF CENTERS INC., a corporation formed under the laws of the Province of British Columbia, Canada

("Buyer");

AND: EAGLE QUEST GOLF CENTERS (TEXAS) INC., a Texas corporation

("Subsidiary");

AND:

GOLF REAL ESTATE, INC., a Texas corporation ("GRE");
GOLF OPERATIONS, INC., a Texas corporation ("GO")(GRE and GO are collectively herein sometimes referred to as "Sellers");

WHEREAS, GRE owns certain real property and personal property utilized by GO in the operation of the business known as "Total Golf Kingwood", which is located in the Kingwood area of Montgomery County, Texas; and

WHEREAS, GO owns all properties of any kind and character not otherwise owned by GRE used in the operation of Total Golf Kingwood, and owns Total Golf Kingwood and any and all business rights and interests related thereto; and

WHEREAS, Total Golf Kingwood includes an executive golf course, a golf practice facility, and related businesses, including, but not limited to driving ranges and the sale of golf merchandise (the "Business"); and

WHEREAS, Buyer desires to purchase all personal property, and related rights and interests, owned by GO and GRE and utilized by GO in the operation of the Business; and

WHEREAS, Buyer desires that all of the Acquired Assets (as defined herein) purchased by Buyer hereunder be delivered and assigned, at the Closing, to "Subsidiary"; and

WHEREAS, Subsidiary desires to enter into a lease\option to purchase agreement with GRE relative to the real property utilized by GO in the operation of the Business; and

WHEREAS, T. Michael O'Connor, an individual residing in Houston, Texas ("Principal") is the sole shareholder of GO and of GRE respectively; and

WHEREAS, Sellers, Principal, and Buyer entered into a Letter of Intent dated February 12, 1997 ("Letter of Intent"), copy of which is attached hereto as Schedule A to this Agreement, whereby the parties thereto agreed to work toward the preparation of a definitive agreement regarding the sale by GO and GRE to Buyer of the above described personal property and the lease\option to purchase of the above described real property by GRE to Buyer; and

WHEREAS, certain capitalized terms used but not defined elsewhere in the text of this Agreement are defined in Section 10 (B) hereof;

NOW THEREFORE,

IN CONSIDERATION of the mutual covenants, agreements, representations, and warranties contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and the Sellers hereby agree as follows:

1. **PURCHASE AND SALE**

(A) Assets.

(i) Acquired Assets. On the terms and subject to the conditions of this Agreement, the Sellers shall, at the Closing (as hereinafter defined), sell, convey, transfer, assign and deliver (as their interests are set forth in the following schedules) to Buyer, and Buyer shall purchase and acquire from the Sellers, all assets, rights, and interests used or held for use in connection with the Business, other than the Excluded Assets (as defined in Section 1(A)(ii) hereof) (the "Acquired Assets"), including, without limitation, the following:

(a) Fixtures. All buildings, structures, improvements, fixtures, facilities and construction in progress (the "Fixtures") located on the real property described on Schedule B to this Agreement (the "Real Property"), including, without limitation, the Fixtures listed on Schedule C to this Agreement.

(b) Personal Property. All motor vehicles, furniture, computers, printers, software, files, books, records, tools, supplies, equipment, furnishings and all other tangible personal property used or held for use in connection with the Business, including, without limitation, the items described in Schedule C to this Agreement (the "Personal Property").

(c) Inventory. All range ball inventory and other inventory and supplies (the "Inventory") used or held for use in connection with the Business as of the Closing. A list of all Inventory outstanding on the Closing Date, together with invoice and retail prices, shall be provided by the Sellers to Buyer on the Closing Date (the "Inventory Certificate").

(d) Contract Rights. The benefit of all contracts, leases, rental agreements, tenancies, licenses, engagements and commitments, written or oral, expressed or implied, relating to or arising out of the conduct of the Business or the Acquired Assets, including, without limitation, the items listed on Schedule D to this Agreement (the "Assumed Contracts").

(e) Accounts Receivable. All accounts receivable (the "Receivables") relating to the conduct of the Business outstanding as of the Closing.

(f) Permits. All Existing Permits (as defined herein).

(g) Records. All documents, records, files and reports, whether written, printed or electronically stored, relating to the Business or the Acquired Assets.

(h) Certain Claims. All rights and incidents of interest in and to causes of action, suits, proceedings, judgments, claims and demands of any nature, whenever maturing or asserted, relating to or arising directly or indirectly out of the Acquired Assets or the Business, including, without limitation, all interests in and rights to claims under insurance policies and insurance contracts and claims thereunder.

(i) Intangible Assets. All goodwill associated with the Business, all intellectual property rights (including, without limitation, all patents, copyrights, trademarks, trade names, service marks, logos, slogans, promotions, literary property, trade secrets, know-how and other proprietary rights, whether registered or unregistered) and applications therefor used or held for use in connection with the Business, including, without limitation, the trade names "Total Golf" and "Total Golf Kingwood", or any variations of such names, all telephone listings, telephone numbers and telephone advertising contracts, all lists of customers and prospective customers, files, books and records and other information relating to the day to day

carrying on of the Business, and all other rights used in connection with the Business (collectively, the "Goodwill").

(ii) Excluded Assets. Notwithstanding the foregoing Section 1(A)(i), the assets, rights and interests listed on Schedule E to this Agreement, including, without limitation, all of Sellers' right, title and interest in that certain software known as "Club Pro", the fee simple title to the Real Property (other than the Fixtures), and all right, title and interest of GRE in and to any and all easements not located upon the Real Property but used for purposes of ingress and egress (collectively, "Excluded Assets") will not be included in the Acquired Assets or sold, transferred, assigned, conveyed or delivered by the Sellers to Buyer; provided, however, that the Sellers hereby grant to Buyer and Subsidiary the non-exclusive right to use Club Pro in connection with the operation and maintenance of the Business, without the payment of any royalty or other additional consideration, in its current version and in any improved or modified version, without any obligation on the part of the Sellers to improve, modify, or support Club Pro, for the five (5) year period following the Closing Date; provided, however that neither Buyer nor Subsidiary may use Club Pro for any purpose in connection with the operation and maintenance of other businesses, locations or facilities owned or operated by Buyer or Subsidiary unless a separate license for such use is first obtained from GO.

(B) Liabilities.

(i) Assumed Liabilities. On the terms and subject to the conditions of this Agreement, Buyer will, at the Closing, assume and thereafter in due course pay, perform and discharge the following, and only the following, liabilities and obligations of the Sellers (the "Assumed Liabilities"):

(a) All liabilities and obligations of the Sellers arising under the terms of the Assumed Contracts listed on Schedule D but only to the extent such liabilities and obligations arise, accrue or first become due after the Closing under the terms of the Assumed Contracts; provided, however, that Buyer will not assume or be responsible for any such liabilities or obligations which arise from any breach or default by the Sellers under any Assumed Contract, all of which liabilities and obligations will constitute Retained Liabilities (as hereinafter defined). Notwithstanding anything to the contrary contained in this Agreement or any document delivered in connection herewith, Buyer's obligations in respect of the Assumed Liabilities will not extend beyond the extent to which the Sellers were obligated in respect thereof and will be subject to Buyer's right to contest in good faith the nature and extent of any such liability or obligation.

(b) All liabilities for accrued vacation for employees of the Sellers who are offered employment by Buyer, but only to the extent Buyer receives credit against the Closing Payment and, consequently, the Purchase Price (as defined herein) pursuant to Section 5(H) hereof.

(c) All liabilities for unpaid personal and real property taxes payable on or with respect to the Acquired Assets or the Real Property (collectively, the "Total Assets"), but only to the extent Buyer receives credit against the Closing Payment, and consequently, the Purchase Price pursuant to Section l(C)(ii) hereof.

(ii) Retained Liabilities. Except as provided in Section l(B)(i) hereof, the Sellers will retain, and Buyer will not assume or be responsible or liable with respect to, any liabilities or obligations of the Sellers, whether or not arising out of or relating to the conduct of the Business or associated with or arising from any of the Total Assets and whether fixed or contingent or known or unknown, incurred up to and on the Closing Date (collectively, the "Retained Liabilities").

(C) Purchase Price.

(i) Payments. In addition to assuming the Assumed Liabilities, Buyer will pay for the Acquired Assets and the Noncompetition Agreements (as defined herein) the following payments (collectively, the "Purchase Price").

(a) Initial Cash Payments.

(1) $25,000.00 US (the "Deposit"), which was placed in escrow for the benefit of Sellers pursuant to the escrow instructions attached as Schedule S to this Agreement, which amount is subject to refunding according to the terms of the Letter of Intent; and

(2) $1,575,000.00 US (the "Closing Payment"), which is subject to adjustment as provided in this Agreement, payable to the Sellers by cash, certified check, wire transfer or other certified funds on the Closing Date;

(b) Share Payments.

(1) At the Closing, Buyer will deliver to GO certificates representing a total of 100,000 common shares of Buyer (the "Buyer Shares").

(2) At the Closing, Buyer will execute and deliver to Sellers a Share Purchase Warrant Certificate in the form attached hereto as Schedule P to this Agreement granting to GRE warrants (the "Options") to purchase from Buyer a total of 200,000 Buyer Shares at a per-share price of $1.00 (One Dollar) US. One-half of the Options will become exercisable on December 15, 1997, and the remainder will become exercisable on December 15, 1998.

(c) Reimbursement Payments.

(1) At least five days prior to the Closing, Sellers will deliver to Buyer a certificate (the "Capital Lease Certificate") showing a list of, and the payments remaining under any capital leases relating to any of the Total Assets. Buyer shall have the option of assuming such leases as it shall determine to assume, in which case, such leases ("Assumed Leases") shall be included in and governed by the provisions of this Agreement dealing with Assumed Contracts, provided, however, that the personal property covered by Assumed Leases shall not be included in the Acquired Assets; and provided, further, that Buyer receives credit against the Closing Payment and consequently, the Purchase Price, of an amount equal to the net present value (determined using a 6% discount rate) of all remaining lease payments due subsequent to the Closing Date with respect to the Assumed Leases ("Assumed Leases Payout"). The Assumed Leases Payout shall then be added to the actual buy-out cost of the capital leases not assumed by Buyer, and the Buyer shall reimburse Sellers for one-half (½) of such total sum, not to exceed $50,000.00.

(2) At the Closing, Buyer shall reimburse Sellers for all attorney's fees and expenses paid by Sellers to their attorneys relating to the negotiation, preparation, review and revision of the Letter of Intent, this Agreement and the transaction documents and instruments related to this Agreement and the transactions contemplated hereby and thereby; provided, however that the

total amount of such reimbursement shall not exceed $10,000.00 US.

(d) Contingent Payments. Within sixty (60) days after the end of each Measurement Period (as described in the following table) during which Buyer achieves any one of the Performance Targets (as described below) for such Measurement Period ("Performance Targets"), Buyer shall deliver to Sellers the amounts set forth in the table below beside the description of such Measurement Period (the "Contingent Payments"):

Measurement Period	Amount	Gross Golf Revenue	Gross Range Revenue	Gross Sales Revenue
Day after the Closing Date through the first anniversary of the Closing Date ("Initial Measurement Period").	$250,000 US	$_____	$_____	$_____
Day after the first anniversary of the Closing Date through the second anniversary of the Closing Date.	$250,000 US	See Below	See Below	See Below
Day after the second anniversary of the Closing Date through the third anniversary of the Closing Date.	$150,000 US	See Below	See Below	See Below
Day after the third anniversary of the Closing Date through the fourth anniversary of the Closing Date.	$100,000 US	See Below	See Below	See Below
Day after the fourth anniversary of the Closing Date through the fifth anniversary of the Closing Date.	$50,000 US	See Below	See Below	See Below

For purposes of this Agreement, the Performance Targets with respect to a Measurement Period (except the Initial Measurement Period which Performance Targets shall be those set forth in the above table beside the description of the Initial Measurement Period) shall be achieved if any one of the following three Performance Targets is achieved during such Measurement Period at the Business located on the Real Property included in the Total Assets: not less than 80% of

the average of i) the gross revenue from rounds of golf and rental of golf carts (a "round of golf" shall consist of one paid circuit of nine holes upon the golf course, inclusive of junior, senior, promotional, complimentary, tournament, outings, and other similar circuits of nine holes, whether completed or not, and/or whether discounted or not)("Gross Golf Revenue"); ii) the gross driving range revenue from rentals of "buckets of balls" at the "driving range" ("Gross Range Revenue"); or iii) the gross retail sales revenue from sales of merchandise and miscellaneous rentals (not including golf cart rentals) ("Gross Sales Revenue") for the two-year period preceding such Measurement Period (for purposes of the second Measurement Period, the two-year period shall include the Initial Measurement Period and the 12 month period immediately preceding the Initial Measurement Period); provided, however, that in the event that a Performance Target is not achieved for a particular Measurement Period (the "Missed Measurement Period") but the Performance Target would be achieved if the two-year period considered were the Missed Measurement Period and the year subsequent to the Missed Measurement Period, then the Contingent Payment shall be paid upon that two-year average. For a period of five (5) years after the Closing Date, and\or as long as the Contingent Payments are payable Buyer agrees: a) to provide to GO, on or before the thirtieth (30th) day after the end of each calendar quarter hereafter, a statement ("Revenue Statement") setting forth in detail the Gross Golf Revenue, Gross Range Revenue, and Gross Sales Revenue (the "Revenue Data") applicable to such calendar quarter, and make available for review evidence thereof generated in the normal course of business, reasonably satisfactory to GO, subject to receipt by Buyer of reasonably acceptable (to Buyer) confidentiality covenants; and b) to furnish to GO, on or before the fifteenth (15th) day after the end of the eleventh month of each Measurement Period, a statement summarizing the required Revenue Data relative to the immediately preceding ten months of the Measurement Period, together with evidence thereof reasonably satisfactory to GO generated in the normal course of business ("Critical Revenue Statement")(and permit the copying thereof, subject to receipt by Buyer of reasonably acceptable (to Buyer) confidentiality covenants) and such other information as may be reasonably requested by GO to conduct a complete and thorough audit thereof for the purposes of assuring compliance with the letter and spirit of this component of the consideration to be paid. In the event that Buyer shall fail to timely provide to Seller the Critical Revenue Statement the Performance

Target for the then applicable Measurement Period shall be deemed automatically achieved;

(ii) Prorations and Adjustments.

(a) At or prior to the Closing, Sellers will fully pay and discharge all current and long-term liabilities relating to the Business or relating to or affecting the Total Assets (including, without limitation, vehicle leases and all obligations outstanding with respect to capital leases relating to the Total Assets that are not listed on the Capital Lease Certificate) and any prepayment penalties or other fees and expenses associated with such payment. In the event that such debt is not fully paid and discharged before the Closing, such debt, together with all associated costs, will be paid out of the Closing Payment, and consequently, the Purchase Price at the Closing, subject to the further terms of Section 1(C)(iii) hereof.

(b) All personal and real property taxes relative to the current year payable with respect to the Total Assets which are unpaid on the Closing Date shall be prorated between the Sellers and Buyer as of the Closing Date based on the most current available tax rates and assessed values (such prorations to be adjusted when final rates and assessed values are established). All such taxes attributable to the period that ends on the Closing Date, which remain unpaid as of the Closing Date, shall be deducted from the Closing Payment and, consequently, the Purchase Price, and shall be paid by Buyer on the Sellers' behalf to the applicable taxing authorities. An amount equal to the aggregate amount of such taxes, if any, which are attributable to the period that begins after the Closing Date and which have been paid by the Sellers prior to the Closing Date shall be added to the Closing Payment and, consequently, the Purchase Price.

(c) All adjustments to the Purchase Price will be allocated to the Closing Payment and will be calculated as of 11:59 p.m. on the Closing Date.

(iii) Escrow of Portion of Purchase Price. At Closing that portion of the Purchase Price which is equal to the actual buy-out cost of the capital leases not assumed by Buyer pursuant to Section 2(D) hereof which has not been paid prior to Closing shall not be paid to Sellers but shall be held in escrow by the Title Company as escrow agent ("Escrow Agent") pursuant to an escrow agreement acceptable to Sellers, Buyer and Title Company ("Escrow Agreement") until GO shall, subject to the further terms hereof, provide to

(iii) Buyer and Subsidiary shall have delivered, or caused to be delivered, to the Sellers each of the documents required by Section 9(B);

(iv) Buyer and Subsidiary shall have provided to the Sellers such evidence of their compliance with all laws, regulations, or orders required by the laws of the State of Texas relative to this Agreement and the transactions contemplated hereby (and any payments of the Purchase Price being paid in accordance herewith), as shall have been reasonably requested in writing by the Sellers, including, but not limited to evidence of the filing by Buyer of any reports or returns required to be filed by Buyer with any governmental or regulatory agency with respect to the transactions contemplated hereby;

(v) Buyer shall have provided to the Sellers evidence of its financial condition sufficient to satisfy the Sellers (and their counsel) as to the credit worthiness of Buyer and as to the ability of Buyer to pay the Purchase Price;

(vi) Buyer shall have provided to the Sellers such information relative to the Buyer Shares and the Options and Buyer's right and authority to deliver such Buyer Shares and Options as shall have been reasonably requested in writing by the Sellers; and

(vii) Buyer and Subsidiary shall have delivered, or caused to be delivered to Sellers such evidence of their power and authority to execute and deliver this Agreement and to perform its obligations hereunder, as shall have been reasonably requested in writing by Sellers.

8. CLOSING DOCUMENTS

(A) Delivery of Closing Documents by the Sellers. At the Closing, the Sellers will deliver to Buyer the following documents in form and substance reasonably satisfactory to Buyer, duly executed as required:

(i) motor vehicle transfer/tax forms transferring the automobiles included among the Acquired Assets to Buyer, free and clear of all Liens (one for each automobile) and duly endorsed certificates of title for the automobiles evidencing that title to such vehicles is held free and clear of all Liens (one for each automobile);

(ii) a bill of sale conveying the Acquired Assets to Buyer;

(iii) an assignment to Buyer of the Assumed Contracts;

(iv) a certificate of the Sellers to the effect that the conditions set forth in Sections 7(B)(iii), (iv), (v), (vi), and (vii) hereof have been satisfied;

(v) a current certificate of existence and good standing certificate of each of the Companies, issued by the Secretary of State of the State of Texas and the Comptroller of Public Accounts, respectively;

(vi) a certificate of each Seller to the effect that such Seller is not a foreign person within the meaning of Section 1445(b)(2) of the Code;

(vii) a TLTA Extended Leasehold Owner's Form B Policy of Title Insurance or its equivalent from the Title Company (the "Title Policy") or a binding undertaking from the Title Company to issue such policy, insuring that leasehold title to the Real Property is vested in Buyer with a policy amount equal to $1,000,000.00, which Title Policy will contain no exceptions other than the Permitted Exceptions (including any so-called "standard exceptions"), will insure leasehold title to the Real Property in Buyer with such affirmative endorsements as may be reasonably requested by Buyer, (the cost of the premium charged by the Title Company will be at equal cost to the Sellers and Buyer);.

(viii) an opinion of the Sellers' counsel, dated as of the Closing Date and addressed to Buyer, in the form of Schedule L to this Agreement;

(ix) Noncompetition Agreements in the forms of Schedule M to this Agreement duly executed by each Seller and Principal (the "Noncompetition Agreements");

(x) a Ground Lease and Option and recordable Memorandum of Lease in the form of Schedule N to this Agreement duly executed by GRE;

(xi) the Vacation Certificate, duly executed by the Sellers;

(xii) the Capital Lease Certificate;

(xiii) the Inventory Certificate;

(xiv) a list and aging of the Receivables;

(xv) the Accounts Payable Report

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	**Chapter 11**
RANDALL'S ISLAND FAMILY GOLF CENTERS, INC., et al.	:	**Case Nos. 00 B 41065 (SMB) through 00 B 41196 (SMB)**
Debtors.	:	

ANSWERING MEMORANDUM OF LAW IN SUPPORT OF OBJECTION TO DEBTORS' MOTION FOR ORDERS PURSUANT TO SECTIONS 105, 363, 365, AND 1146 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002, 6004, 6006, AND 6007, RELATING TO ASSUMPTION, SALE AND ASSIGNMENT OF CERTAIN LEASEHOLD INTERESTS

INTRODUCTION

Debtors filed their Petition(s) for Relief under Chapter 11 of the United States Bankruptcy Code on May 4, 2000, and continue to operate as Debtor in Possession. Golf Real Estate, Inc. is the landlord and debtor, Eagle Quest Golf Centers (Texas), Inc. Is the tenant under that certain Ground Lease and Option, ("Ground Lease") dated May 15, 1997, by and between Eagle Quest GolfCenters (Texas), Inc., as "Tenant" and Golf Real Estate, Inc., as "Landlord", a true and correct copy of the provisions of which applicable and referred to herein is attached as Exhibit "A" for all pertinent purposes to Golf Real Estate, Inc.'s Objection to Debtors' Motion For Orders (Authorizing and Approving Assumption, Sale and Assignment of Certain Leasehold Interests)(please see portions which are double underlined for quick reference). Debtors' Motion is herein called "Motion", and Golf Real Estate, Inc.'s Objection is herein called "Objection". The Ground Lease is an unexpired

non-residential real property lease. Debtor Eagle Quest Golf Centers (Texas), Inc. is presently in default under the Ground Lease, as more fully set forth in the Objection. Among other current defaults, the Ground Lease is in default because Debtors have failed to pay a "contingent payment" due July 15, 2000, in the amount of $150,000.00 ("2000 Contingent Payment"). This 2000 Contingent Payment is required under that certain Asset Purchase Agreement ("Asset Purchase Agreement") dated May 15, 1997, by and between Eagle Quest Golf Centers, Inc., as "Buyer", Eagle Quest Golf Centers (Texas), Inc., as "Subsidiary", and Golf Real Estate, Inc. and Golf Operations, Inc., as "Sellers", a true and correct copy of the provisions of which applicable and referred to herein is attached as Exhibit "B" for all pertinent purposes to the Objection (please see portions which are double underlined for quick reference). Debtors have not cured various pre-petition and post-petition defaults, including the default relating to non-payment of the 2000 Contingent Payment, and have not provided adequate assurance (or assurance of any kind or character) that such defaults will be cured. Without curing or offering to cure such defaults Debtors have presented to the Court the Motion.

ARGUMENT

BANKRUPTCY CODE SECTION 365(b)(1) PROVIDES THAT AN UNEXPIRED LEASE MAY NOT BE ASSUMED UNLESS, AT THE TIME OF THE ASSUMPTION, ALL DEFAULTS THEREUNDER HAVE BEEN CURED OR ADEQUATE ASSURANCE THAT SUCH DEFAULTS WILL BE PROMPTLY CURED HAS BEEN PROVIDED.

Bankruptcy Code Section 365(b)(1) provides, in pertinent part, as follows:

> "If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of the assumption of such contract or lease, the trustee -
>
> > (A) cures, or provides adequate assurance that the trustee will promptly cure, such default;"

11 U.S.C. §365(b)(1). The language of this section makes it clear that Debtors in this case must cure each of the defaults under the Ground Lease, and/or provide to Golf Real Estate, Inc. adequate assurance that such defaults will be cured.

Debtors apparently challenge whether a "default" related to the 2000 Contingent Payment has occurred which must be cured under the Bankruptcy Code. The Ground Lease contains a Section setting forth the intent of the parties thereto as to the meaning of the term "default", including a cross-default provision, [Section 15.01(e) of the Ground Lease], which states that the following constitutes and "Event of Default" under the Ground Lease:

> "(e) if Tenant or Eagle Quest Golf Centers Inc. shall default in the payment of any amount required to be paid by Tenant or Eagle Quest Golf Centers Inc. or in the performance of or compliance with any of the terms and conditions required to be done by Tenant or Eagle Quest Golf Centers Inc. under the Asset Purchase Agreement."

As indicated in the Objection, Debtors are obligated to pay and have failed to pay the 2000 Contingent Payment called for in Asset Purchase Agreement, and are therefore now in default thereunder. In addition, Debtors have failed to comply with §365(d)(3) of the Bankruptcy Code requiring the Debtors to timely perform all post-petition obligations of an unexpired lease until it is assumed or rejected.

The Ground Lease and the Asset Purchase Agreement were and are part of and form one indivisible transaction which was consummated on May 15, 1997. Both of these documents, together with more than twenty five (25) other interrelated documents, were executed simultaneously on May 15, 1997. The Ground Lease and the Asset Purchase Agreement were inextricably intertwined, the consideration for execution of one being part of the consideration for the execution of the other, in such a manner that the interrelationship between the two was a specific and essential part of the

bargain by and between the parties thereto. The Asset Purchase Agreement specifically referred to and incorporated the Ground Lease and the Ground Lease specifically referred to and incorporated the Asset Purchase Agreement, with the Ground Lease containing the above referenced cross-default provision. Any assertion by Debtors that their obligation under the Asset Purchase Agreement to pay the 2000 Contingent Payment may be disregarded and treated as an obligation separate and distinct from the Ground Lease, or which may be rejected or assumed separately, must be evaluated in the light of *In Re Gardinier, Inc.,* 831 F. 2d 974 (11th Cir. 1987), cert denied, –U.S.–. 109 S.Ct. 140, 102 L.Ed.2d 112 (1988), which stated that the question of divisibility of contracts is a matter of state law. In Texas it is a well-established rule of construction that instruments which are executed contemporaneously shall be considered and construed together, provided that in the determination of whether a transaction constitutes or is comprised of one or several contracts is primarily based upon the intention of the parties. *Jim Walter Homes, Inc. v. Schuenemann,* 668 S.W.2d 324, 327 (Tex. 1984); *Jones v. Kelley,* 614 S.W.2d 95, 98 (Tex. 1981); *Lone Star Gas Co.,v X-Ray Gas Co.,* 164 S.W.2d 504, 508 (Tex. 1942); *Garcia v. Rutledge*, 649 S.W.2d 307, 310-311 (Tex. App - Amarillo, 1982, no writ). Furthermore, under the doctrine of incorporation by reference, which is alive and well in the State of Texas, where one signed contract refers to another signed contract or instrument, and specifically incorporates the same by reference, the second document constitutes and is a part of the first. *City of Port Isabel v. Shiba,* 976 S.W.2d 856 (Tex App - Corpus Christi 1998). In the preamble to the Asset Purchase Agreement, the intent of the parties to enter into a series of agreements to effectuate a general purpose of acquisition of personal properties for operation of a business and of the leasing of land upon which to conduct such business was clearly set forth, and Debtors' predecessor in title agreed to execute and deliver the Ground Lease substantially in the form which was attached to the Asset Purchase Agreement. Clearly the parties intended to execute several

documents, all of which comprised a single, unified indivisible transaction, and that is exactly what they did on May 15, 1997. Examination of the Asset Purchase Agreement will reveal that the Ground Lease was specifically incorporated by reference [see Section 8(A)(x)], and that the Ground Lease specifically incorporated by reference the Asset Purchase Agreement [see Section 3.02]. Under the applicable rules of construction and substantive law in Texas, the Ground Lease and the Asset Purchase Agreement were indivisible agreements, and must be construed and enforced as one agreement.

The impact of the substantive law in Texas as relates to the indivisibility of the Ground Lease and the Asset Purchase Agreement is that failure to make the 2000 Contingent Payment under the Asset Purchase Agreement is and constitutes default under the Ground Lease. This situation is analogous to a similar situation reviewed by the Court in *In the Matter of Easthampton Sand & Gravel Co., Inc.,* 25 B.R. 193 (Bkrtcy. E.D. N.Y. 1982), wherein the lessor executed an agreement with the debtor whereby it leased a certain piece of property and sold a manufacturing business operating thereon. A portion of the purchase price of the business assets was represented by a promissory note payable over several years. The lease provided that default on payment of the note would constitute default under the lease. The Court, after evaluating the array of documents presented under the law of New Jersey, held that the lease was part and parcel of a unified transaction whereby the creditor sold its concrete manufacturing business to the debtor, that the lease could not be assumed independently of the note obligation, and that non-payment of the note was a default that had to be cured prior to assumption. The same conclusion was reached in a similar case, *In the Matter of T & H Diner, Inc.,* 108 B.R. 448 (D.N.J. 1989), where the Court held that the "...incurred default precludes assumption of the lease as the debtor has failed to comply with §365(d)(3) which

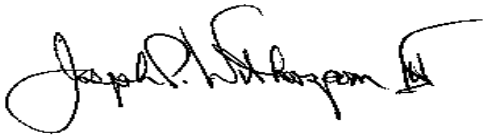
requires the debtor to timely perform *all* (emphasis supplied by Court) of its obligations under the lease until it is assumed.

CONCLUSION

For the foregoing reasons, Golf Real Estate, Inc. and Golf Operations, Inc. respectfully request that the Court deny the Motion, and for the other and further relief sought in the Objection.

Dated: Houston, Texas
August 9, 2000

POLLICOFF, SMITH & REMELS, L.L.P.



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